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EDWARD MILLER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

EDWARD MILLER,

Plaintiff,

v.

APPTIO, INC. and CLOUDABILITY, INC.,  
et al.,

Defendants.

Case No. 4:19-cv-07762-HSG

JOINT DISCOVERY PLAN

Date: March 5, 2020

Time: 2:00 p.m.

Courtroom: 2

Judge: Hon. Haywood S. Gilliam, Jr.

Action Filed: November 25, 2019

Pursuant to Federal Rules of Civil Procedure 26(f) and the Court's Order Setting Initial Case Management Conference, Plaintiff EDWARD MILLER ("Plaintiff") and Defendants APPTIO, INC. and CLOUDABILITY, INC. (collectively, "Defendants") respectfully submit the following joint proposed discovery plan.

1       The parties have prepared this Joint Discovery Plan without waiver of, or limitation to, any  
 2 objections each may have or may in the future raise with respect to the disclosures or to this  
 3 litigation, including, but not limited to: (1) relevance; (2) any privilege or immunity doctrine  
 4 (including, but not limited to, attorney-client and work product); (3) undue burden; (4)  
 5 confidentiality; or (5) proprietary or commercially sensitive information. The parties reserve the  
 6 right to amend, modify, revise, and/or clarify any portion of this Joint Discovery Plan pursuant to  
 7 stipulation.

8       **I.     CHANGES TO THE TIMING, FORM, OR REQUIREMENT FOR DISCLOSURES  
 9                          UNDER RULE 26(a) (FRCP 26(f)(3)(A))**

10      The parties have agreed to exchange Initial Disclosures on February 27, 2020, a week in  
 11 advance of the initial case management conference. All other deadlines set by FRCP 26(a) shall  
 12 remain unaltered. However, the parties reserve the right to amend any other deadline set by FRCP  
 13 26(a) by stipulation.

14      **II.    THE SUBJECT AND TIMING OF DISCOVERY (FRCP 26(f)(3)(B))**

15      The parties believe that formal discovery is premature pending the outcome of Defendants'  
 16 Motion to Dismiss Plaintiff's First Amended Complaint. The parties have agreed to exchange  
 17 certain targeted information in connection with settlement discussions.

18      **III.   ISSUES REGARDING DISCLOSURES OR ELECTRONICALLY STORED  
 19                          INFORMATION (FRCP 26(f)(3)(C))**

20      Presently, the parties see no issues regarding disclosure, discovery, or preservation of  
 21 electronically stored information. The parties intend to address any such issues by stipulation  
 22 and/or Court intervention. The parties reserve the right to raise objections to discovery once it has  
 23 been propounded.

24      **IV.    ISSUES ABOUT CLAIMS OF PRIVILEGE OR THE PROTECTION OF TRIAL-  
 25                          PREPARATION MATERIALS (FRCP 26(f)(3)(D))**

26      Presently, the parties see no issues with claims of privilege or the protection of trial  
 27 preparation materials and intend to address any such issues by stipulation and/or Court

1 intervention through the appropriate motions for protective orders. The parties reserve the right to  
2 raise objections to discovery once it has been propounded.

3 **V. CHANGES TO DISCOVERY LIMITATIONS (FRCP 26(f)(3)(E))**

4 Presently, the parties see no issues with altering discovery limitations but reserve all right  
5 to modify them by stipulation.

6 **VI. RECOMMENDATIONS FOR PRE-TRIAL CONFERENCE OR PROTECTIVE  
7 ORDERS (FRCP 28(f)(3)(F))**

8 Presently, the parties see no need for the Court to issue any orders under Rule 26(c) or  
9 under Rule 16(b) and/or (c). If a formal protective order becomes necessary, the parties agree to  
10 adopt the Model Protective Order for the Northern District Court of California.

11 Dated: February 27, 2020

Respectfully Submitted,

13 By: /s/  
14 Daniel Remer

15 Attorney for Plaintiff  
16 Edward Miller

17 HOGE, FENTON, JONES & APPEL, INC.  
18

19 By: /s/  
20 Alison P. Buchanan  
Christen E. Bourne

21 Attorneys for Defendant  
22 Cloudability, Inc.

23 DAVIS WRIGHT TREMAINE LLP  
24

25 By: /s/  
Martin L. Fineman

26 Attorneys for Defendants  
27 Apptio, Inc. and Cloudability, Inc.  
28

## ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), I attest that I obtained concurrence in the filing of this document from the other signatories.

Dated: February 27, 2020

## HOGE, FENTON, JONES & APPEL, INC.

By: /s/  
Alison P. Buchanan  
Christen E. Bourne

Attorneys for Defendant  
Cloudability, Inc.